

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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John Ellering, *et al.*,

Plaintiffs,

Civ. No. 10-1025 (RHK/LIB)

**ORDER**

v.

Sellstate Realty Systems Network, Inc.,  
*et al.*,

Defendants.

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This matter is before the Court *sua sponte*.

On August 31, 2010, Defendant Michael Krein moved to dismiss the claims against him in this action, noticing a hearing on his Motion for December 1, 2010.<sup>1</sup> In preparing for that hearing, the Court discovered that the Complaint did not adequately allege the citizenship of Plaintiff Select Associates Realty, LLC, and hence the Court could not determine whether diversity jurisdiction existed in this case. As a result, it issued an Order to Show Cause requiring Plaintiffs to remedy their pleading defects, and establishing the existence of diversity jurisdiction, on or before December 3, 2010. The Court canceled the hearing on the Motion to Dismiss pending Plaintiffs' response to the Order to Show Cause.<sup>2</sup>

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<sup>1</sup> The Motion was initially scheduled to be heard on November 4, 2010, but the hearing was twice rescheduled.

<sup>2</sup> Notably, by Order dated July 19, 2010 (Doc. No. 20), then-Chief Magistrate Judge Erickson pointed out these defects in Plaintiffs' Complaint and ordered them to amend it to properly allege diversity jurisdiction. (See id. at 2 n.1.) As of the date of the Order to Show Cause – November

Plaintiffs have now responded to the Order to Show Cause and the Court is satisfied, based on their response, that diversity jurisdiction does in fact exist.<sup>3</sup> Accordingly, **IT IS ORDERED** that the Order to Show Cause (Doc. No. 49) is **DISCHARGED**. However, having now reviewed the papers filed in support of, and in opposition to, the Motion to Dismiss, the Court does not believe that oral argument would materially assist its resolution of the Motion. Accordingly, the Court advises the parties that it will not hold a hearing on the Motion, but will instead decide the Motion on the written submissions.

Dated: December 17, 2010

s/Richard H. Kyle  
RICHARD H. KYLE  
United States District Judge

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24, 2010 – Plaintiffs had not yet amended their Complaint. There is no obvious explanation for this four-month delay, and the Court is troubled by it, particularly in light of Plaintiffs’ counsels’ prior (mis)conduct, which nearly resulted in the imposition of sanctions. (See Doc. No. 22.) Counsel is warned that any future failure to comply with the Court’s directives, or any other misconduct, will be met with stern sanctions, up to and including the dismissal of the Complaint and/or the levying of fines upon Plaintiffs’ counsel.

<sup>3</sup> Defendants apparently agree; despite the opportunity to file a memorandum addressing Plaintiffs’ response to the Order to Show Cause, Defendants have not done so.